



DEPARTMENT OF THE AIR FORCE  
WASHINGTON DC

Office Of The Under Secretary

MEMORANDUM FOR SEE DISTRIBUTION

25 February 2002

FROM: SAF/IAPX  
1080 Air Force Pentagon  
Washington DC 20330-1080

SUBJECT: Aviation and Transportation Security Act (ATSA), Public Law 107-71 (Section 113, ATSA)  
(SAF/IAPX02007)

In response to the events of 11 Sep 01, Congress enacted Public 107-71 on November 19, 2001, which imposed new restrictions on providing aviation training to aliens. Section 113 of the ATSA requires training providers to furnish the Attorney General with information on aliens 45 days in advance of the proposed training date for all training in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. The advanced notice and information on the alien are required to allow the Department of Justice (DoJ) to initiate a security risk assessment.

The provisions of Section 113 were effective with the publication of interim guidance in the Federal Register on January 15, 2002. The Attorney General granted advanced consent for the training of certain categories of aliens that were determined to pose no risk without the 45-day notification. However, aliens provided training by the Department of Defense (DoD) or by contractors under Security Assistance (SA) sponsorship were not among the categories identified. As a result, some aviation training provided under SA was impacted.

DoJ agrees that the Act was not intended to apply to training provided directly by the military services to foreign military members; however, training provided by contractors is impacted. Since international students under SA sponsorship must be screened prior to receiving training in accordance with paragraph 100007, DoD 5105.38-M, DoJ subsequently agreed further screening of these students was unnecessary. DoJ published revised interim guidance on February 8, 2002, which includes provisional advance consent for the training of military pilots or other crew members provided training by a component of the DoD or the U.S. Coast Guard or under contract awarded by the DoD or the U.S. Coast Guard. A copy of the revised interim guidance is attached for your information and file. We expect this advance consent to be published in DoJ's final implementing guidance for Section 113 of the ATSA. Since the screening procedures for students entering training under SA sponsorship do not apply to individuals under self-invited visit procedures, case/line item managers must insure that all FMS training is identified under the training MASL on LOAs and not imbedded in a non-training line item.

SAF/IAPX point of contact is Mrs. Sparkman, DSN 425-8905.

// Signed //  
TERRY L. BATES  
Chief, Security Assistance Policy Division  
Deputy Under Secy, Int'l Affairs

Attachment:  
Notice of Advance Consent, Feb 8, 2002

[Federal Register: February 8, 2002 (Volume 67, Number 27)]  
[Notices]  
[Page 6051-6052]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr08fe02-100]

=====  
-----

DEPARTMENT OF JUSTICE

Provision of Aviation Training to Certain Alien Trainees,  
Additional Categories of Provisional Advance Consent

AGENCY: Department of Justice.

ACTION: Notice of advance consent for providing aviation training to  
certain alien trainees.

-----

SUMMARY: Under section 113 of the Aviation and Transportation Security Act (ATSA), training providers subject to regulation by the Federal Aviation Administration (FAA) are prohibited from providing training to aliens in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless they provide prior notification to the Attorney General. This notice temporarily grants advance consent for the training of certain categories of aliens, without requiring that they provide identifying information to the Attorney General, based on a provisional finding that they do not constitute a risk to aviation or national security at this time.

DATES: This notice is effective February 8, 2002, and remains in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Steven C. McCraw, Director, Foreign Terrorist Tracking Task Force, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, Telephone (703) 414-9535.

SUPPLEMENTARY INFORMATION: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71. Upon enactment, section 113 of the ATSA imposed new constrictions on persons subject to regulation under Title 49 subtitle VII part A, United States Code, with respect to providing aviation training to aliens. Persons subject to regulation under Title 49 subtitle VII Part A, United States Code, include individual training providers, certificated carriers, and flight schools (hereinafter collectively referred to as ``training providers''). Pursuant to section 113, training providers must provide the Attorney General with the alien's identification in such form as

the Attorney General may require in order to initiate a security risk assessment by the Department of Justice. After notification, the Attorney General then has 45 days to inform the training provider that the alien should not be given the requested training because he or she presents a risk to aviation or national security. If the Attorney General does not indicate that the person is a risk within this 45-day review period, then the training provider may proceed with training. The ATSA, however, permits the Attorney General to interrupt training if he later determines that the alien poses a risk to aviation or national security. The Attorney General has delegated his authority under section 113 to the Director of the Foreign Terrorist Tracking Task Force. The Department plans to publish implementation procedures shortly to provide a means by which training providers may notify the Attorney General with respect to covered individuals seeking aviation instruction who are not eligible for advance consent in order to initiate the Department of Justice's 45-day review period.

On January 16, 2002, the Department published a notice in which it granted advance consent for certain categories of aliens to begin aviation training (the ``First Advance Consent Notice''). 67 FR 2238 (Jan. 16, 2002). As discussed in that notice, the Department recognized that section 113 of the ATSA became immediately effective, and that training providers have been forced to suspend the training of aliens covered by the ATSA pending the implementation of the process for notification to the Attorney General. Because the suspension of training imposed a substantial economic burden on regulated training providers, the Department granted provisional advance consent, effective January 15, 2002, for training providers to resume aviation training for certain categories of aliens who appeared to pose a risk to aviation and national security which was sufficiently minimal that the Department would not deny them training. This notice supercedes the notice published in the Federal Register on January 16, 2002. 67 FR 2238 (Jan. 16, 2002). Any training commenced in compliance with that notice, however, remains valid and may continue.

#### Provisional Advance Consent for the Training of Certain Aliens

Since publication of the First Advance Consent Notice, the Department has continued to analyze the types of aliens seeking aviation training. The Department continues to believe that the primary intent of Congress regarding the enactment of this statute was to prevent potentially dangerous aliens from being taught how to pilot aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. Based on that standard, it appears that certain categories of aliens pose little such risk. For example, currently licensed pilots who seek recurrent training already know how to fly the aircraft for which they wish to maintain proficiency. Denying such retraining would appear to offer no benefit to aviation or national security. Indeed, the purpose behind recurrent training is to make flying safer for the public.

The Department has determined that advance consent for aviation training could be granted to additional categories of aliens who appear not to pose the risk to aviation or national security contemplated by

Congress in section 113 of the ATSA. The new categories of aliens identified by the Department have some overlap with respect to the three categories previously identified in the First Advance Consent Notice. Therefore, in order to prevent confusion, this notice supercedes the First Advance Consent Notice. Any training commenced in compliance with the First Advance Consent Notice, however, remains valid and may

[[Page 6052]]

continue. The Department will revisit this provisional advance consent when it promulgates any necessary implementing regulations to determine whether these pilots should continue to be granted advance consent.

Effective immediately and until further notice, the Department is granting a provisional advance consent for the training of the following categories of aliens, based on a determination that they do not appear to pose a risk to aviation or national security:

(1) Foreign nationals who are current and qualified as pilot in command, second in command, or flight engineer with respective certificates and ratings recognized by the United States for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Military pilots or other crew members who are being provided training by a component of the Department of Defense or the U.S. Coast Guard, or pursuant to a contract awarded by a component of the Department of Defense or the U.S. Coast Guard;

(3) Military pilots or other crew members who are being provided training pursuant to an export authorization of the Department of State, provided such authorization was issued prior to February 1, 2002 and that the training was scheduled to commence prior to April 1, 2002; and

(4) Commercial, governmental, corporate or military pilots of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more who must receive familiarization training on a particular aircraft in order to transport it to the purchaser or recipient, provided that the training provided be limited to familiarization and not basic flight instruction.

The categories covering military pilots were devised after consulting with the Departments of Defense and State. Based on these consultations, the Department believes that military pilots training under the auspices of the Department of Defense or Coast Guard are thoroughly investigated prior to training and pose no risk to aviation or national security. Aliens being trained pursuant to export authorizations of the Department of State, however, are not always investigated to the same extent. As a result, the Department is limiting the advance consent for this category to certain aliens already scheduled for training, as these were not found to constitute a risk to aviation or national security.

Determination of Status as a U.S. Citizen or National or as an Alien

Section 113 of the ATSA applies to all aliens as defined in section 101(a)(3) of the Immigration and Nationality Act, but does not currently apply to citizens or nationals of the United States. Accordingly, training providers must make a determination as to whether or not a prospective trainee is an alien. If the prospective trainee establishes that he or she is a citizen or national of the United States, the restrictions of section 113 do not apply.

Training providers should require appropriate proof of citizenship or nationality from all trainees who claim to be citizens or nationals of the United States, before commencing aviation training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. This requirement is necessary to prevent aliens from falsely claiming to be United States citizens or nationals in order to evade the Department's security risk assessment.

The Department believes that the following documents are sufficient to establish proof of citizenship or nationality:

- (1) A valid, unexpired United States passport;
  - (2) An original birth certificate with raised seal documenting birth in the United States or one of its territories;
  - (3) An original U.S. naturalization certificate with raised seal, Form N-550 or Form N-570;
  - (4) An original certification of birth abroad, Form FS-545 or Form DS-1350; or
  - (5) An original certificate of U.S. citizenship, Form N-560 or Form N-561.
- (6) In the case of training provided to a federal employee pursuant to a contract between a U.S. Government agency and a training provider, the agency's written certification as to its employee's U.S. citizenship may be accepted as sufficient proof of such citizenship.

If a training provider has questions about the documents above or any other documentation presented by a person who claims to be a citizen or national of the United States, the training provider may seek further guidance from the Department, the Immigration and Naturalization Service, or the appropriate federal agency.

#### Commencement of Aviation Training for Aliens Granted Advance Consent

After a training provider reasonably determines that a prospective alien trainee falls within one of the four advance consent categories, the training provider may proceed with training the alien immediately and does not have to submit any identifying information to the Department. The training provider, however, should retain records to document how the training provider made the determination that the alien was eligible for advance consent. Appropriate measures will be taken by the Department with respect to any alien who is determined to pose a risk to aviation or national security. Available civil and/or criminal penalties will be pursued with respect to any training provider who knowingly or negligently provides training to aliens not covered by this notice.

Dated: February 4, 2002.  
Steven C. McCraw,  
Director, Foreign Terrorist Tracking Task Force.  
[FR Doc. 02-3070 Filed 2-7-02; 8:45 am]  
BILLING CODE 4410-19-P

## **DISTRIBUTION LIST** **SAF/IA POLICY LETTERS**

AFSAT/CC  
315 J Street West  
Randolph AFB TX 78150-4354  
Email: [bill.fehr@randolph.af.mil](mailto:bill.fehr@randolph.af.mil)

HQ AFSAC/IA  
4225 Logistics Ave  
WPAFB, OH 45433-5006  
Email: [afsac.ccx@wpafb.af.mil](mailto:afsac.ccx@wpafb.af.mil)

DFAS-DE/ID/IRCA/IX/IF  
6760 East Irvington Place  
Denver CO 80279-5000

HQ AMC/FMP  
402 Scott Drive, Unit 1K1  
Scott AFB IL 62225-5311

HQ AMC/XPRI  
402 Scott drive, unit 1A3  
Scott AFB Ill 62225-5311  
Email: [michael.wilmore@scott.af.mil](mailto:michael.wilmore@scott.af.mil)

ANGRC/FMBO  
1411 Jefferson Davis Hwy  
Arlington, VA 22202-3231

HQ ACC/DOTS  
205 Dodd Blvd, Suite 101  
Langley AFB VA 23665-2789  
Email: [acc.dots@langley.af.mil](mailto:acc.dots@langley.af.mil)

HQ PACAF/XPZP  
Security Assistance Office (SAO)  
25 E Street, Suite F207  
Hickam AFB HI 96853-5417  
Email: [pacaf.xpzp@hickam.af.mil](mailto:pacaf.xpzp@hickam.af.mil)

HQ USAFE/LGX  
Unit 3050, Box 105  
APO AE 09094-0105  
Email: [usafe.lg@ramstein.af.mil](mailto:usafe.lg@ramstein.af.mil)

ANG/XPP  
1411 Jefferson Davis Hwy  
Arlington, VA 22202-3231  
Email: [rossj@ngb.ang.af.mil](mailto:rossj@ngb.ang.af.mil)

HQ AFSPC/XPIP  
150 Vandenberg St, Suite 1105  
Peterson AFB CO 80914-4620  
Email: [thomas.dickinson@peterson.af.mil](mailto:thomas.dickinson@peterson.af.mil)  
Email: [john.tucker@peterson.af.mil](mailto:john.tucker@peterson.af.mil)

SAF/FMBIS  
Pentagon, Room 4D223  
Email: RSS - SAF/FMB SCATS Org Inbox

SAF/GCI  
Pentagon, Room 4C941  
Email: [ileene.berfield@pentagon.af.mil](mailto:ileene.berfield@pentagon.af.mil)

SAF/IAPA  
Email: RSS - SAF/IAPA

SAF/IAPD  
Email: RSS - SAF/IAPD

SAF/IARE  
Email: RSS - SAF/IARE

SAF/IARL  
Email: RSS - SAF/IARL

SAF/IARM  
Email: RSS - SAF/IARM

SAF/IARP  
Email: RSS - SAF/IARP

SAF/IAPQ  
Email: RSS - SAF/IAPQ

SAF/IARS  
Email: RSS - SAF/IARS

**DISTRIBUTION LIST**  
**SAF/IA POLICY LETTERS**

SAF/IARW

Email: RSS - SAF/IARW

cc:

DISAM/DMC

Bldg 125

2335 7th Street

WPAFB OH 45433-7803

Email: [research@DISAM.wpafb.af.mil](mailto:research@DISAM.wpafb.af.mil)

ASC/SYM (Deskbook)

ATTN: Mr. Joe Smith

2275 D. St, Bldg 16, Room 106

WPAFB, OH 45458-7233

Please review this distribution list to ensure organizational names, mailing and email address are current. If your office no longer requires information concerning security assistance policies and procedures, please contact Ms Sandy Harding, SAF/IAPX, email [sandy.harding@pentagon.af.mil](mailto:sandy.harding@pentagon.af.mil) to update your information.